

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1099

92ND GENERAL ASSEMBLY

2004

3665S.12T

AN ACT

To repeal sections 21.810, 32.057, 135.215, 173.196, 173.796, 620.014, 620.017, and 620.1300, RSMo, and to enact in lieu thereof sixteen new sections relating to tax credits, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 21.810, 32.057, 135.215, 173.196, 173.796, 620.014, 620.017, and 620.1300, RSMo, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 21.810, 32.057, 135.215, 135.800, 135.802, 135.805, 135.810, 135.815, 135.825, 135.830, 173.196, 173.796, 610.255, 620.014, 620.017, and 620.1300, to read as follows:

21.810. 1. There is established a permanent joint committee of the general assembly to be known as the "Joint Committee on Tax Policy" which shall be composed of five members of the senate, appointed by the president pro tem of the senate, and five members of the house of representatives, appointed by the speaker of the house of representatives. A majority of the members of the committee shall constitute a quorum. The members shall annually select one of the members to be the chair and one of the members to be the vice chair. The speaker of the house of representatives and the president pro tem of the senate shall appoint the respective majority members. The minority leader of the house and the minority leader of the senate shall appoint the respective minority members. The members shall receive no additional compensation, but shall be reimbursed for actual and necessary expenses incurred by them in the performance of their duties. No major party shall be represented on the committee by more than three members from the senate nor by more than

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

three members from the house. The committee is authorized to meet and act year round and to employ the necessary personnel within the limits of appropriations. The staff of the committee on legislative research, house research, and senate research shall provide necessary clerical, research, fiscal, and legal services to the committee, as the committee may request.

2. It shall be the duty of the committee:

(1) To make a continuing study and analysis of the current and proposed tax policy of this state as it relates to:

- (a) Fairness and equity;
- (b) True economic impact;
- (c) Burden on individuals and businesses;
- (d) Effectiveness of tax expenditures;
- (e) Impact on political subdivisions of this state;

(f) Agreements and contracts with the federal government, other states and territories, political subdivisions, and private entities relating to the collection and administration of state and local taxes and fees;

(g) Compliance with the state and United States Constitution and federal and international law; and

(h) The effects of interstate commerce;

(2) To make a continuing study and review of the department of revenue, the department of economic development, the state tax commission, and any other state agency, commission, or state executive office responsible for the administration of tax policies;

(3) To study the effects of the coupling or decoupling with the federal income tax code as it relates to the state income tax;

(4) To make recommendations, as and when the committee deems fit, to the general assembly for legislative action or to report findings and to the departments, commissions, and offices for administrative or procedural changes; [and]

(5) To study the effects of a sales tax holiday; and

(6) To examine and assess the public benefit of any tax credit program that is the subject of an audit by the state auditor pursuant to section 620.1300, RSMo, and provide a report to the general assembly and the governor with the committee's findings and recommendations, if any, regarding such tax credit program within six months of receiving the audit report.

3. All state departments, commissions, and offices responsible for the administration of tax policies shall cooperate with and assist the committee in the performance of its duties and shall make available all books, records and information requested, except individually identifiable information regarding a specific taxpayer. The committee may also consult with public and private universities and academies, public and private organizations, and private citizens in the performance of its duties. The committee may contract with public and private entities, within the limits of appropriation, for analysis and study of current or

proposed changes to state and local tax policy. The committee shall have the power to subpoena witnesses, take testimony under oath, compel the attendance of witnesses, the giving of testimony and the production of records.

32.057. 1. Except as otherwise specifically provided by law, it shall be unlawful for the director of revenue, any officer, employee, agent or deputy or former director, officer, employee, agent or deputy of the department of revenue, any person engaged or retained by the department of revenue on an independent contract basis, any person to whom authorized or unauthorized disclosure is made by the department of revenue, or any person who lawfully or unlawfully inspects any report or return filed with the department of revenue or to whom a copy, an abstract or a portion of any report or return is furnished by the department of revenue to make known in any manner, to permit the inspection or use of or to divulge to anyone any information relative to any such report or return, any information obtained by an investigation conducted by the department in the discharge of official duty, or any information received by the director in cooperation with the United States or other states in the enforcement of the revenue laws of this state. Such confidential information is limited to information received by the department in connection with the administration of the tax laws of this state.

2. Nothing in this section shall be construed to prohibit:

(1) The disclosure of information, returns, reports, or facts shown thereby, as described in subsection 1 of this section, by any officer, clerk or other employee of the department of revenue charged with the custody of such information:

(a) To a taxpayer or the taxpayer's duly authorized representative under regulations which the director of revenue may prescribe;

(b) In any action or proceeding, civil, criminal or mixed, brought to enforce the revenue laws of this state;

(c) To the state auditor or the auditor's duly authorized employees as required by subsection 4 of this section;

(d) To any city officer designated by ordinance of a city within this state to collect a city earnings tax, upon written request of such officer, which request states that the request is made for the purpose of determining or enforcing compliance with such city earnings tax ordinance and provided that such information disclosed shall be limited to that sufficient to identify the taxpayer, and further provided that in no event shall any information be disclosed that will result in the department of revenue being denied such information by the United States or any other state. The city officer requesting the identity of taxpayers filing state returns but not paying city earnings tax shall furnish to the director of revenue a list of taxpayers paying such earnings tax, and the director shall compare the list submitted with the director's records and return to such city official the name and address of any taxpayer who is a resident of such city who has filed a state tax return but who does not appear on the list furnished by such city. The director of revenue may set a fee to reimburse the department for the costs reasonably incurred in providing this information;

(e) To any employee of any county or other political subdivision imposing a sales tax which is administered by the state department of revenue whose office is authorized by the governing body of the county or other political subdivision to receive any and all records of the state director of revenue pertaining to the administration, collection and enforcement of its sales tax. The request for sales tax records and reports shall include a description of the type of report requested, the media form including electronic transfer, computer tape or disk, or printed form, and the frequency desired. The request shall be made by annual written application and shall be filed with the director of revenue. The director of revenue may set a fee to reimburse the department for the costs reasonably incurred in providing this information. Such city or county or any employee thereof shall be subject to the same standards for confidentiality as required for the department of revenue in using the information contained in the reports;

(f) To the director of the department of economic development or the director's duly authorized employees in discharging the director's official duties to certify taxpayers eligibility to claim state tax credits as prescribed by statutes;

(g) To any employee of any political subdivision, such records of the director of revenue pertaining to the administration, collection and enforcement of the tax imposed in chapter 149, RSMo, as are necessary for ensuring compliance with any cigarette or tobacco tax imposed by such political subdivision. The request for such records shall be made in writing to the director of revenue, and shall include a description of the type of information requested and the desired frequency. The director of revenue may charge a fee to reimburse the department for costs reasonably incurred in providing such information;

(2) The publication by the director of revenue or of the state auditor in the audit reports relating to the department of revenue of:

(a) Statistics, statements or explanations so classified as to prevent the identification of any taxpayer or of any particular reports or returns and the items thereof;

(b) The names and addresses without any additional information of persons who filed returns and of persons whose tax refund checks have been returned undelivered by the United States Post Office;

(3) The director of revenue from permitting the Secretary of the Treasury of the United States or the Secretary's delegates, the proper officer of any state of the United States imposing a tax equivalent to any of the taxes administered by the department of revenue of the state of Missouri or the appropriate representative of the multistate tax commission to inspect any return or report required by the respective tax provision of this state, or may furnish to such officer an abstract of the return or report or supply the officer with information contained in the return or disclosed by the report of any authorized investigation. Such permission, however, shall be granted on condition that the corresponding revenue statute of the United States or of such other state, as the case may be, grants substantially similar privileges to the director of revenue and on further condition that such corresponding statute gives confidential status to the material with which it is

concerned;

(4) The disclosure of information, returns, reports, or facts shown thereby, by any person on behalf of the director of revenue, in any action or proceeding to which the director is a party or on behalf of any party to any action or proceeding pursuant to the revenue laws of this state when such information is directly involved in the action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of such information as is pertinent to the action or proceeding and no more;

(5) The disclosure of information, returns, reports, or facts shown thereby, by any person to a state or federal prosecuting official, **including, but not limited to, the state and federal attorneys general, or** the official's designees[, or other persons officially] involved in any criminal [or], quasi-criminal, **or civil** investigation, action or proceeding pursuant to the laws of this state or of the United States when such information is pertinent to an investigation, action or proceeding involving the administration of the revenue laws or duties of public office or employment connected therewith;

(6) Any school district from obtaining the aggregate amount of the financial institution tax paid pursuant to chapter 148, RSMo, by financial institutions located partially or exclusively within the school district's boundaries, provided that the school district request such disclosure in writing to the department of revenue;

(7) The disclosure of records which identify all companies licensed by this state pursuant to the provisions of subsections 1 and 2 of section 149.035, RSMo. The director of revenue may charge a fee to reimburse the department for the costs reasonably incurred in providing such records;

(8) The disclosure to the commissioner of administration pursuant to section 34.040, RSMo, of a list of vendors and their affiliates who meet the conditions of section 144.635, RSMo, but refuse to collect the use tax levied pursuant to chapter 144, RSMo, on their sales delivered to this state.

3. Any person violating any provision of subsection 1 or 2 of this section shall, upon conviction, be guilty of a class D felony.

4. The state auditor or the auditor's duly authorized employees who have taken the oath of confidentiality required by section 29.070, RSMo, shall have the right to inspect any report or return filed with the department of revenue if such inspection is related to and for the purpose of auditing the department of revenue; except that, the state auditor or the auditor's duly authorized employees shall have no greater right of access to, use and publication of information, audit and related activities with respect to income tax information obtained by the department of revenue pursuant to chapter 143, RSMo, or federal statute than specifically exists pursuant to the laws of the United States and of the income tax laws of the state of Missouri.

135.215. 1. Improvements made to "real property" as such term is defined in section 137.010, RSMo, which are made in an enterprise zone subsequent to the date such zone or expansion thereto was designated, may upon approval of an authorizing resolution by the

governing authority having jurisdiction of the area in which the improvements are made, be exempt, in whole or in part, from assessment and payment of ad valorem taxes of one or more affected political subdivisions, provided that, except as to the exemption allowed under subsection 3 of this section, at least fifty new jobs that provide an average of at least thirty-five hours of employment per week per job are created and maintained at the new or expanded facility. Such authorizing resolution shall specify the percent of the exemption to be granted, the duration of the exemption to be granted, and the political subdivisions to which such exemption is to apply and any other terms, conditions or stipulations otherwise required. A copy of the resolution shall be provided the director within thirty calendar days following adoption of the resolution by the governing authority.

2. No exemption shall be granted until the governing authority holds a public hearing for the purpose of obtaining the opinions and suggestions of residents of political subdivisions to be affected by the exemption from property taxes. The governing authority shall send, by certified mail, a notice of such hearing to each political subdivision in the area to be affected and shall publish notice of such hearing in a newspaper of general circulation in the area to be affected by the exemption at least twenty days prior to the hearing but not more than thirty days prior to the hearing. Such notice shall state the time, location, date and purpose of the hearing.

3. Notwithstanding subsection 1 of this section, at least one-half of the ad valorem taxes otherwise imposed on subsequent improvements to real property located in an enterprise zone shall become and remain exempt from assessment and payment of ad valorem taxes of any political subdivision of this state or municipality thereof for a period of not less than ten years following the date such improvements were assessed, provided the improved properties are used for assembling, fabricating, processing, manufacturing, mining, warehousing or distributing properties.

4. No exemption shall be granted for a period more than twenty-five years following the date on which the original enterprise zone was designated by the department.

5. The provisions of subsection 1 of this section shall not apply to improvements made to real property which have been started prior to August 28, 1991.

6. The mandatory abatement referred to in this section shall not relieve the assessor or other responsible official from ascertaining the amount of the equalized assessed value of all taxable property annually as required by section 99.855, RSMo, and shall not have the effect of reducing the payments in lieu of taxes referred to in subdivision (2) of section 99.845, RSMo, unless such reduction is set forth in the plan approved by the governing body of the municipality pursuant to subdivision (1) of section 99.820, RSMo.

7. Effective August 28, 2004, any abatement or exemption provided for in this section on an individual parcel of real property shall cease after a period of thirty days of business closure, work stoppage, major reduction in force, or a significant change in the type of business conducted at that location. For the purposes of this subsection, "work stoppage" shall not include strike or lockout or

time necessary to retool a plant, and "major reduction in force" is defined as a seventy-five percent or greater reduction. Any owner or new owner may reapply, but cannot receive the abatement or exemption for any period of time beyond the original life of the enterprise zone.

135.800. 1. The provisions of sections 135.800 to 135.830 shall be known and may be cited as the "Tax Credit Accountability Act of 2004".

2. As used in sections 135.800 to 135.830, the following terms mean:

(1) "Administering agency", the state agency or department charged with administering a particular tax credit program, as set forth by the program's enacting statute; where no department or agency is set forth, the department of revenue;

(2) "Agricultural tax credits", the agricultural product utilization contributor tax credit created pursuant to section 348.430, RSMo, the new generation cooperative incentive tax credit created pursuant to section 348.432, RSMo, and the wine and grape production tax credit created pursuant to section 135.700;

(3) "All tax credit programs", the tax credit programs included in the definitions of agricultural tax credits, business recruitment tax credits, community development tax credits, domestic and social tax credits, entrepreneurial tax credits, environmental tax credits, housing tax credits, redevelopment tax credits, and training and educational tax credits;

(4) "Business recruitment tax credits", the business facility tax credit created pursuant to sections 135.110 to 135.150 and section 135.258, the enterprise zone tax benefits created pursuant to sections 135.200 to 135.270, the business use incentives for large-scale development programs created pursuant to sections 100.700 to 100.850, RSMo, the development tax credits created pursuant to sections 32.100 to 32.125, RSMo, the rebuilding communities tax credit created pursuant to section 135.535, and the film production tax credit created pursuant to section 135.750;

(5) "Community development tax credits", the neighborhood assistance tax credit created pursuant to sections 32.100 to 32.125, RSMo, the family development account tax credit created pursuant to sections 208.750 to 208.775, RSMo, the dry fire hydrant tax credit created pursuant to section 320.093, RSMo, and the transportation development tax credit created pursuant to section 135.545;

(6) "Domestic and social tax credits", the youth opportunities tax credit created pursuant to section 135.460 and sections 620.1100 to 620.1103, RSMo, the shelter for victims of domestic violence created pursuant to section 135.550, the senior citizen or disabled person property tax credit created pursuant to sections 135.010 to 135.035, the special needs adoption tax credit created pursuant to sections 135.325 to 135.339, the maternity home tax credit created pursuant to

section 135.600, and the shared care tax credit created pursuant to section 660.055, RSMo;

(7) "Entrepreneurial tax credits", the capital tax credit created pursuant to sections 135.400 to 135.429, the certified capital company tax credit created pursuant to sections 135.500 to 135.529, the seed capital tax credit created pursuant to sections 348.300 to 348.318, RSMo, the new enterprise creation tax credit created pursuant to sections 620.635 to 620.653, RSMo, the research tax credit created pursuant to section 620.1039, RSMo, the small business incubator tax credit created pursuant to section 620.495, RSMo, the guarantee fee tax credit created pursuant to section 135.766, and the new generation cooperative tax credit created pursuant to sections 32.105 to 32.125, RSMo;

(8) "Environmental tax credits", the charcoal producer tax credit created pursuant to section 135.313, the wood energy tax credit created pursuant to sections 135.300 to 135.311, and the manufacturing and recycling flexible cellulose casing tax credit created pursuant to section 260.285, RSMo;

(9) "Housing tax credits", the neighborhood preservation tax credit created pursuant to sections 135.475 to 135.487, the low income housing tax credit created pursuant to sections 135.350 to 135.363, and the affordable housing tax credit created pursuant to sections 32.105 to 32.125, RSMo;

(10) "Recipient", the individual or entity who is the original applicant for and who receives proceeds from a tax credit program directly from the administering agency, the person or entity responsible for the reporting requirements established in section 135.805;

(11) "Redevelopment tax credits", the historic preservation tax credit created pursuant to sections 253.545 to 253.561, RSMo, the brownfield redevelopment program tax credit created pursuant to sections 447.700 to 447.718, RSMo, the community development corporations tax credit created pursuant to sections 135.400 to 135.430, the infrastructure tax credit created pursuant to subsection 6 of section 100.286, RSMo, the bond guarantee tax credit created pursuant to section 100.297, RSMo, and the disabled access tax credit created pursuant to section 135.490;

(12) "Training and educational tax credits", the community college new jobs tax credit created pursuant to sections 178.892 to 178.896, RSMo, the skills development account tax credit created pursuant to sections 620.1400 to 620.1460, RSMo, the mature worker tax credit created pursuant to section 620.1560, RSMo, the sponsorship and mentoring tax credit created pursuant to section 135.348.

135.802. 1. Beginning January 1, 2005, all applications for all tax credit programs shall include, in addition to any requirements provided by the enacting statutes of a particular credit program, the following information to be submitted to the department administering the tax credit:

(1) Name, address, and phone number of the applicant or applicants, and the name, address, and phone number of a contact person or agent for the applicant or applicants;

(2) Taxpayer type, whether individual, corporation, nonprofit or other, and taxpayer identification number, if applicable;

(3) Standard industry code, if applicable; and

(4) Program name and type of tax credit, including the identity of any other state or federal program being utilized for the same activity or project.

2. In addition to the information required by subsection 1 of this section, an applicant for a community development tax credit shall also provide information detailing the title and location of the corresponding project, the estimated time period for completion of the project, and all geographic areas impacted by the project.

3. In addition to the information required by subsection 1 of this section, an applicant for a redevelopment tax credit shall also provide information detailing the location and legal description of the property, age of the structure, if applicable, whether the property is residential, commercial, or governmental, and the projected project cost, labor cost, and projected date of completion. Where a redevelopment tax credit applicant is required to submit contemporaneously a federal application for a similar credit on the same underlying project, the submission of a copy of the federal application shall be sufficient to meet the requirements of this subsection.

4. In addition to the information required by subsection 1 of this section, an applicant for a business recruitment tax credit shall also provide information detailing the category of business by size, the address of the business headquarters and all offices located within this state, the number of employees at the time of the application, the number of employees projected to increase as a result of the completion of the project, and the estimated project cost.

5. In addition to the information required by subsection 1 of this section, an applicant for a training and educational tax credit shall also provide information detailing the name and address of the educational institution to be used, the average salary of workers to be served, the estimated project cost, and the number of employees and number of students to be served.

6. In addition to the information required by subsection 1 of this section, an applicant for a housing tax credit also shall provide information detailing the address, legal description, and fair market value of the property, and the projected labor cost and projected completion date of the project. Where a housing tax credit applicant is required to submit contemporaneously a federal application for a similar credit on the same underlying project, the submission of a copy of the federal application shall be sufficient to meet the requirements of this

subsection. For the purposes of this subsection, "fair market value" means the value as of the purchase of the property or the most recent assessment, whichever is more recent.

7. In addition to the information required by subsection 1 of this section, an applicant for an entrepreneurial tax credit shall also provide information detailing the amount of investment and the names of the project, fund, and research project.

8. In addition to the information required by subsection 1 of this section, an applicant for an agricultural tax credit shall also provide information detailing the type of agricultural commodity, the amount of contribution, the type of equipment purchased, and the name and description of facility.

9. In addition to the information required by subsection 1 of this section, an applicant for an environmental tax credit shall also include information detailing the type of equipment, if applicable, purchased and any environmental impact statement, if required by state or federal law.

10. An administering agency may, by rule, require additional information to be submitted by an applicant. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created pursuant to the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be void.

11. Where the sole requirement for receiving a tax credit in the enabling legislation of any tax credit is an obligatory assessment upon a taxpayer or a monetary contribution to a particular group or entity, the application requirements provided in this section shall apply to the recipient of such assessment or contribution and shall not apply to the assessed nor the contributor.

12. It shall be the duty of each administering agency to provide information to every applicant, at some time prior to authorization of an applicant's tax credit application, wherein the requirements of this section, the annual reporting requirements of section 135.805, and the penalty provisions of section 135.810 are described in detail.

135.805. 1. A recipient of a community development tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the title and location of the corresponding project, the estimated or actual time period for completion of the project, and all geographic areas impacted by the project.

2. A recipient of a redevelopment tax credit shall annually, for a period of

three years following issuance of tax credits, provide to the administering agency information confirming whether the property is used for residential, commercial, or governmental purposes, and the projected or actual project cost, labor cost, and date of completion.

3. A recipient of a business recruitment tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the category of business by size, the address of the business headquarters and all offices located within this state, the number of employees at the time of the annual update, an updated estimate of the number of employees projected to increase as a result of the completion of the project, and the estimated or actual project cost.

4. A recipient of a training and educational tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the name and address of the educational institution used, the average salary of workers served as of such annual update, the estimated or actual project cost, and the number of employees and number of students served as of such annual update.

5. A recipient of a housing tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the address of the property, the fair market value of the property, as defined in subsection 6 of section 135.802, and the projected or actual labor cost and completion date of the project.

6. A recipient of an entrepreneurial tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the amount of investment and the names of the project, fund, and research project.

7. A recipient of an agricultural tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the type of agricultural commodity, the amount of contribution, the type of equipment purchased, and the name and description of facility, except that if the agricultural credit is issued as a result of a producer member investing in a new generation processing entity then the new generation processing entity, and not the recipient, shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information confirming the type of agricultural commodity, the amount of contribution, the type of equipment purchased, and the name and description of facility.

8. A recipient of an environmental tax credit shall annually, for a period of three years following issuance of tax credits, provide to the administering agency information detailing any change to the type of equipment purchased, if applicable, and any change to any environmental impact statement, if such

statement is required by state or federal law.

9. The reporting requirements established in this section shall be due annually on June thirtieth of each year. No person or entity shall be required to make an annual report until at least one year after the credit issuance date.

10. Where the sole requirement for receiving a tax credit in the enabling legislation of any tax credit is an obligatory assessment upon a taxpayer or a monetary contribution to a particular group or entity, the reporting requirements provided in this section shall apply to the recipient of such assessment or contribution and shall not apply to the assessed nor the contributor.

11. Where the enacting statutes of a particular tax credit program or the rules of a particular administering agency require reporting of information that includes the information required in sections 135.802 to 135.810, upon reporting of the required information, the applicant shall be deemed to be in compliance with the requirements of sections 135.802 to 135.810. The administering agency shall notify in writing the department of economic development of the administering agency's status as custodian of any particular tax credit program and that all records pertaining to the program are available at the administering agency's office for review by the department of economic development.

12. The provisions of subsections 1 to 10 of this section shall apply beginning on June 30, 2005.

135.810. 1. After credits have been issued, any failure to meet the annual reporting requirements established in section 135.805 or any determination of fraud in the application process shall result in penalties as follows:

(1) Failure to report for more than six months but less than one year shall result in a penalty equal to two percent of the value of the credits issued for each month of delinquency during such time period;

(2) Failure to report for more than one year shall result in a penalty equal to ten percent of the value of the credits issued for each month of delinquency during such time period up to one hundred percent of the value of the credit issued is assessed by way of penalty;

(3) Fraud in the application process shall result in a penalty equal to one hundred percent of the credits issued. No taxpayer shall be deemed to have committed fraud in the application process for any credit unless such conclusion has been reached by a court of competent jurisdiction or the administrative hearing commission.

2. Ninety days after the annual report is past due, the administering agency shall send notice by registered mail to the last known address of the person or entity obligated to complete the annual reporting informing such person or entity of the past-due annual report and describing in detail the pending penalties and their respective deadlines. Six months after the annual report is past due, the

administering agency shall notify the department of revenue of any taxpayer subject to penalties. The taxpayer shall be liable for any penalties as of December thirty-first of any tax year and such liability shall be due as of the filing date of the taxpayer's next income tax return. If the taxpayer is not required to file an income tax return, the taxpayer's liability for penalties shall be due as of April fifteenth of each year. The director of the department of revenue shall prepare forms and promulgate rules to allow for the reporting and satisfaction of liability for such penalties. The director of the department of revenue shall offset any credits claimed on a contemporaneously filed tax return against an outstanding penalty before applying such credits to the tax year against which they were originally claimed. Any nonpayment of liability for penalties shall be subject to the same provisions of law as a liability for unpaid income taxes, including, but not limited to, interest and penalty provisions.

3. Penalties shall remain the liability of the person or entity obligated to complete the annual reporting, without regard to any transfer of the credits.

4. Any person or entity obligated to complete the annual reporting requirements provided in section 135.805 shall provide the proper administering agency with notice of change of address when necessary.

5. An administering agency may promulgate rules in order to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

135.815. Prior to authorization of any tax credit application, an administering agency shall verify through the department of revenue that the tax credit applicant does not owe any delinquent income, sales, or use taxes, or interest or penalties on such taxes, and through the department of insurance that the applicant does not owe any delinquent insurance taxes. Such delinquency shall not affect the authorization of the application for such tax credits, except that the amount of credits issued shall be reduced by the applicant's tax delinquency. If the department of revenue or the department of insurance concludes that a taxpayer is delinquent after June fifteenth but before July first of any year, and the application of tax credits to such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer shall be granted thirty days to satisfy the deficiency in which interest, penalties, and additions to

tax shall be tolled. After applying all available credits towards a tax delinquency, the administering agency shall notify the appropriate department, and that department shall update the amount of outstanding delinquent tax owed by the applicant. If any credits remain after satisfying all insurance, income, sales, and use tax delinquencies, the remaining credits shall be issued to the applicant, subject to the restrictions of other provisions of law.

135.825. 1. The administering agencies for all tax credit programs shall, in cooperation with the department of revenue, implement a system for tracking the amount of tax credits authorized, issued, and redeemed. Any such agency may promulgate rules for the implementation of this section.

2. The provisions of this section shall not apply to any credit that is issued and redeemed simultaneously.

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

135.830. The provisions of sections 135.800 to 135.830 shall be construed, wherever necessary, to be in addition to existing requirements, duties, or obligations present in other provisions of law, with regard to all tax credit programs.

173.196. 1. Any business firm, as defined in section 32.105, RSMo, may make a donation to the "Missouri Higher Education Scholarship Donation Fund", which is hereby created in the state treasury. A donating business firm shall receive a tax credit as provided in this section equal to fifty percent of the amount of the donation, except that tax credits shall be awarded each fiscal year in the order donations are received and the amount of tax credits authorized shall total no more than two hundred and fifty thousand dollars for each fiscal year.

2. The department of revenue shall grant tax credits approved under this section which shall be applied in the order specified in subsection 1 of section 32.115, RSMo, until used. The tax credits provided under this section shall be refundable, and any tax credit not used in the fiscal year in which approved may be carried over the next five succeeding calendar or fiscal years until the full credit has been claimed.

3. No tax credit authorized under this section may be applied against any tax applied in a tax year beginning prior to January 1, 1995.

4. All revenues credited to the fund shall be used, subject to appropriations, to

provide scholarships authorized under sections 173.197 to 173.199, and for no other purpose.

5. For all tax years beginning on or after January 1, 2005, no tax credits shall be authorized, awarded, or issued to any person or entity claiming any tax credit under this section.

173.796. 1. As used in this section, the term "taxpayer" means an individual, a partnership, or a corporation as described in section 143.441 or 143.471, RSMo.

2. Any taxpayer may make a contribution to the fund. Within the limits specified in subsection 3 of this section, a taxpayer shall be allowed a credit against the taxes imposed pursuant to chapter 143, RSMo, except for sections 143.191 to 143.265, RSMo, on that individual or entity of up to fifty percent of the total amount contributed to the fund, not to exceed one hundred thousand dollars per taxpayer.

3. The department of revenue shall administer the tax credits pursuant to this section, and shall certify eligibility for the tax credits in the order applications are received. The total amount of tax credits certified in any one calendar year shall not exceed five million dollars annually. Contributions of up to one hundred thousand dollars per annum per taxpayer may be certified by the department of revenue as a qualified contribution for purposes of receiving a tax credit under this program.

4. If the amount of tax credit exceeds the total tax liability for the year in which the tax credit is claimed, the amount that exceeds the state tax liability may be carried forward for credit against the taxes imposed pursuant to chapter 143, RSMo, except for sections 143.191 to 143.265, RSMo, for the succeeding ten years, or until the full credit is used, whichever occurs first.

5. For all tax years beginning on or after January 1, 2005, no tax credits shall be authorized, awarded, or issued to any person or entity claiming any tax credit under this section.

6. The provisions of this section shall become effective January 1, 1999.

610.255. 1. Records and documents relating to tax credits submitted as part of the application for all tax credits to any department of this state, board, or commission authorized to issue or authorize or recommend the authorization of tax credits shall be deemed closed records until such time as the information submitted does not concern a pending application, and except as limited by other provision of law concerning closed records. For the purposes of this subsection, a "pending application" shall mean any application for credits that has not yet been authorized. In the case of partial authorization of credits, the completed authorization of a single credit shall be sufficient to constitute full authorization to the extent that the authorized credit or credits relate to the same application as the credits that have not yet been authorized.

2. Upon a request for opening of records and documents relating to all tax credit programs, as defined in section 135.800, RSMo, submitted in accordance with the provisions of this chapter, except as limited by the provision of subsection 1

of this section, the agency that is the recipient of the open records request shall make information available consistent with the provisions of this chapter. Where a single record or document contains both open and closed records, the agency shall make a redacted version of such record or document available in order to protect the information that would otherwise make the record or document a closed record. Staff time required for such redaction shall constitute an activity for which a fee can be collected pursuant to section 610.026.

3. As used in this section "closed record" shall mean closed record as defined in section 610.010.

620.014. Records and documents submitted to the department of economic development, to the Missouri economic development, export and infrastructure board, or to a regional planning commission formed pursuant to chapter 251, RSMo, relating to financial investments in a business, or sales projections or other business plan information which may endanger the competitiveness of a business[, or records and documents submitted to the department of economic development, or to a regional planning commission formed pursuant to chapter 251, RSMo, relating to tax credits except for the amount and recipient of any tax credits that are awarded] may be deemed a "closed record" as such term is defined in section 610.010, RSMo.

620.017. 1. The department of economic development shall require that any contract or agreement with any party which provides grants, loans, **tax credits**, other financial assistance or services, to which a monetary value can be assigned, to such party through a program administered by the department of economic development shall:

(1) Specify that such party shall use the proceeds of any such grant, loan, other financial assistance or the benefits of any services solely as required by that program through which the loan, grant, financial assistance or service is provided;

(2) **Describe the economic incentive, including the amount and type of economic incentive;**

(3) **State why the economic incentive is needed;**

(4) **State the public purpose or purposes for the economic incentive;**

(5) **State the goals for the economic incentive and the time periods by which these goals will be met;**

(6) **Describe the financial obligation of the party if the requirements of the contract or agreement are not met;**

(7) **State the name and address of the parent corporation of the recipient, if any; and**

(8) **State all other financial assistance known by the department that was received by the recipient for the same project.**

2. In addition, such a contract or agreement shall require that any recipient which uses the proceeds or services for any other purpose or fails to comply with any requirement established by the program through which the loan, grant, **tax credit**, financial assistance

or service is provided shall return any remaining proceeds to the department and shall also require that any proceeds expended or the value of any **incentives or services to which a monetary value can be assigned** received by the party shall be repaid to the department as required by the contract.

3. The contracts or agreements required by this section shall be governed by and enforceable through the applicable provisions of contract law.

4. The department of economic development shall prepare an annual report regarding all economic incentives administered in the previous calendar year and submit such report to the governor, the president pro tem of the senate, and the speaker of the house of representatives by July first of each year. The annual report shall be made available to the public and shall include, but not be limited to, the following elements:

- (1) The total amount of economic incentives awarded by industry;**
- (2) The distribution of economic incentives by type and public purpose;**
- (3) The distribution of economic incentives by the size of all business recipients; and**
- (4) A reporting of any legal action taken by the department or the state with any parties which have failed to comply with a contract or agreement pursuant to this section.**

620.1300. A cost benefit analysis shall be prepared to evaluate the effectiveness of **all tax credit programs, as defined by section 135.800, RSMo, and** all programs operated by the department of economic development for which the department approves tax credits, loans, loan guarantees, or grants. Each analysis shall be conducted by the state auditor, and shall include, but not be limited to, the costs for each program, the direct state and indirect state benefits and the direct local and indirect local benefits associated with each program, the safeguards to protect noneconomic influences in the award of programs administered by the department, and the likelihood of the economic activity taking place without the program. The result of each analysis shall be published and distributed, by January 1, 2001, and **at least** every [two] **four** years thereafter, to the governor, the speaker of the house of representatives, the president pro tem of the senate, the chairman of the house budget committee, the chairman of the senate appropriations committee, **the joint committee on tax policy**, and the joint committee on economic development policy and planning.